

IT 95-44
Tax Type: INCOME TAX
Issue: Federal Change (Individual)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )  
OF THE STATE OF ILLINOIS      )  
                               )  
        v.                     )    No.  
                               )  
XXXXXX                        )    James P. Pieczonka  
        Taxpayer(s)           )    Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as the result of a timely Request for Hearing by XXXXX, (hereinafter referred to as the "taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on September 24, 1993. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayers failed to file an Illinois Income Tax return for the tax year ended December 31, 1987 based upon federal tape match information. The Notice asserted tax liabilities, as well as penalties pursuant to 35 ILCS 5/1001 and 5/1005 for failure to file and failure to pay the entire tax liability by the due date.

In their Protest, taxpayers admitted that they did not file an IL-1040 for 1987, but contended that most of the taxes were paid through withholding. A hearing in this matter was held on September 26, 1994. The issues to be resolved are:

(1). Whether the taxpayers failed to file an Illinois income tax return for the year ended December 31, 1987?

(2). Whether penalties should be assessed pursuant to 35 ILCS 5/1001, and 5/1005?

Following the submission of all evidence at hearing and a review of the record, it is recommended that the Notice of Deficiency be reduced to conform to the IL-1040 return recalculated by the Technical Review Division.

FINDINGS OF FACT:

1. For the subject taxable year, taxpayers were Illinois residents and earned income in the State of Illinois. The Department, however, did not have record of an IL-1040 return filed by taxpayers for the year in question. (Dept. Ex. No. 1)

2. The Department issued a Notice of Deficiency for the subject taxable year. (Dept. Ex. No. 1)

3. Taxpayers filed a timely Protest. (Dept. Ex. No. 2)

4. In their Protest, taxpayers admitted that they did not file an Illinois income tax return for 1987. Taxpayers, however, contended that most of the taxes due from them were withheld through their employers. Taxpayers did not submit any evidence of withheld taxes. (Dept. Ex. No. 2)

5. At the hearing, taxpayers produced a copy of XXXXX's W-2 for 1987 that reported \$ 995.56 as withheld taxes to Illinois. Also, taxpayers produced evidence of Illinois property taxes paid in the amount of \$976.00. (Taxpayers' Exhibits 1 and 2)

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) The taxpayers, as Illinois residents, earned income in this state or were compensated by an Illinois employer. Accordingly, they were subject to Illinois income tax and required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 et seq.)

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.ed 210 (3rd Dist. 1983). In

order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist.1978). The taxpayer has met that burden in this case.

On this record, taxpayers presented evidence, consisting of copies of a W-2 form for 1987 and a cancelled check for Illinois property taxes paid in 1987 for their Illinois residence. Additionally, taxpayers agreed to pay any deficiency after a credit for taxes withheld of \$996.00 and a subtraction modification of \$976.00 for Illinois property taxes paid in 1987. Taxpayers' documentary evidence was competent and reasonable to prove the Notice incorrect. *Fillichio v. Department of Revenue*, 15 Ill.2d 327 (1958) Accordingly, taxpayers offered sufficient evidence to rebut the Department's prima facie case that no no tax was paid for the year in question.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1001 and 5/1005 for failure to file and failure to pay the entire tax liability by the due date. Having determined that the taxpayers did not file an IL-1040 return for 1987 and that some taxes were withheld from their employer(s) during the year in question, the issue of imposition of these penalties must be addressed.

Taxpayers have failed to offer sufficient evidence of reasonable cause to abate the subject penalties entirely. Taxpayers admitted that they did not file an IL-1040 return for 1987. Taxpayers, however, produced evidence of some Illinois taxes withheld and a property tax subtraction modification. Such evidence is not sufficient to rebut the imposition of the subject penalties entirely since taxpayers admitted they did not file an IL-1040 return for 1987 and did not remit all the taxes due thereon.

Consequently, taxpayers have failed to rebut the Department's case as to the imposition of penalties.

RECOMMENDATION: It is my recommendation that the Department's recomputed return for 1987 based upon the evidence submitted by taxpayers at the hearing be accepted and that the taxes due of \$241.00 and penalties of \$194.00 be upheld.

James P. Pieczonka
Administrative Law Judge

June 14, 1995